

## § 7.38

a hearing or make such other ruling as is appropriate.

(3) If the EEOC Administrative Judge determines that some or all facts are not in genuine dispute, the EEOC Administrative Judge may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 days, issue an order limiting the scope of the hearing or issue a decision without holding a hearing.

### § 7.38 Appeals.

(a) *Appeals to the EEOC.* (1) A Complainant may appeal the Department's final action or dismissal of a complaint. The regulations at 29 CFR part 1614, subpart D, govern a Complainant's right of appeal.

(2) The Department may appeal as provided in 29 CFR 1614.110(a).

(3) A class agent or the Department may appeal an EEOC Administrative Judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or the Department may appeal a final decision on a petition pursuant to 29 CFR 1614.204(g)(4).

(b) *Time limits for appeals to the EEOC.* Appeals described in 29 CFR 1614.401 (a) and (c) must be filed within 30 days of Complainant's receipt of the dismissal, final action or decision, or within 30 days of receipt by the attorney of record, if represented. Appeals described in 29 CFR 1614.401(b) must be filed within 40 days of receipt of the hearing file and decision. Where a Complainant has notified the Director of EEO of alleged noncompliance with a settlement agreement in accordance with 29 CFR 1614.504, the Complainant may file an appeal 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of the Department's determination.

(c) *How to appeal.* (1) The Complainant, the Department, a class agent, grievant or individual class claimant (referred to elsewhere in this part as the appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Oppor-

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tunity Commission, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

(2) The appellant shall furnish a copy of the appeal to the opposing party at the same time the appeal is filed with the EEOC. In or attached to the appeal to the EEOC, the appellant must certify the date and method by which service was made on the opposing party.

(3) If an appellant does not file an appeal within the time limits of this section, the appeal shall be dismissed by the EEOC as untimely.

(4) Any statement or brief on behalf of a Complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal. Any statement or brief on behalf of the Department in support of its appeal must be submitted to the Office of Federal Operations within 20 days of filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(5) The Department must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the Complainant has filed an appeal or within 30 days of submission of an appeal by the Department.

(6) The Department may be represented by the Office of General Counsel in appeals before the Office of Federal Operations.

(7) Any statement or brief in opposition to an appeal must be submitted to the EEOC and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

(d) *Request for reconsideration.* A decision issued under paragraph (a) of § 1614.405 is final within the meaning of

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29 CFR 1614.407 unless the EEOC reconsiders the case. A party may request reconsideration within 30 days of receipt of a decision of the EEOC, which the EEOC in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices or operations of the Department.

### OTHER COMPLAINT AND APPEAL PROCEDURES

#### § 7.39 Negotiated grievance, MSPB appeal and administrative grievance procedures.

(a) *Negotiated grievance procedure.* An aggrieved person covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance procedure can file a complaint under these procedures or a negotiated grievance, but not both. An election to proceed under this section is indicated only by the filing of a written complaint. An election to proceed under a negotiated grievance procedure is indicated by the filing of a timely grievance. (See 29 CFR 1614.301.)

(b) *MSPB appeal procedure.* (1) *Who can file appeal and when.* An aggrieved person alleging discrimination on basis of race, color, religion, sex, national origin, age or reprisal because of participation in related to or stemming from an action that can be appealed to the MSPB can file a complaint under these procedures, or an appeal with the MSPB, but not both. Whichever is filed first, the complaint or the appeal, is considered an election to proceed in that forum. (See 29 CFR 1614.302 through 29 CFR 1614.309.)

(2) *Right to file civil action about MSPB appeal or decision.* The procedures of this section are governed by 29 CFR § 1614.310.

(3) *MSPB appeal rights.* The provisions of 29 CFR part 1614, subpart C, shall govern MSPB appeal rights.

(c) *Administrative grievance procedure.* (1) *Grievance.* A request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction related to employment with the De-

partment and over which the Department has control, including an allegation of coercion, reprisal or retaliation. The range of matters is limited to those for which no other means of administrative review is provided.

(2) *Covered employee.* Any non-bargaining unit employee, including a former employee or applicant for whom a remedy can be provided.

(3) *Responsibilities of participants in the grievance procedure.* Each employee has the responsibility for making a maximum effort to achieve informal settlement of a personal grievance.

(4) *Grievance requirements.* The procedures, responsibilities and processes to be followed by an employee wishing to file an administrative grievance are found in HUD Handbook 771.2 REV-2, Administrative Grievances.

### REMEDIES, ENFORCEMENT AND COMPLIANCE

#### § 7.40 Remedies and enforcement.

(a) *Remedies and relief.* When the Department, or the EEOC, in an individual case of discrimination, finds that a current or former employee or applicant has been discriminated against, the Department shall provide full relief in accordance with 29 CFR 1614.501.

(b) *Attorney's fees and costs.* In a decision or final action, the Department, EEOC Administrative Judge or the EEOC may award the applicant or current or former employee reasonable attorney's fees (including expert witness fees) and other costs incurred in the processing of the complaint.

(1) Full relief in Title VII and Rehabilitation Act cases may include compensatory damages, an award of attorney's fees (including expert witness fees) and costs when requested and verified, in accordance with the requirements of 29 CFR 1614.501(e).

(2) Time period and persons covered. Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the Department, EEOC Administrative Judge or EEOC, except that fees are allowable for a reasonable period of time prior to the notification of representation for